

CENTER FOR DISABILITY ACCESS
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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

Scott Johnson

Plaintiff,

v.

Zale Delaware, Inc., a Delaware
Corporation

Defendant

Case No.

**Complaint For Damages And
Injunctive Relief For Violations
Of: Americans With Disabilities
Act; Unruh Civil Rights Act**

Plaintiff Scott Johnson complains of Zale Delaware, Inc., a Delaware Corporation; and alleges as follows:

PARTIES:

1. Plaintiff is a California resident with physical disabilities. Plaintiff is a level C-5 quadriplegic. He cannot walk and has significant manual dexterity impairments. He uses a wheelchair for mobility and has a specially equipped van.

2. Defendant Zale Delaware, Inc. owned Banter by Piercing Pagoda located at or about 925 Blossom Hill Rd, San Jose, California, in August 2021.

3. Defendant Zale Delaware, Inc. owns Banter by Piercing Pagoda located

1 at or about 925 Blossom Hill Rd, San Jose, California, currently.

2 4. Plaintiff does not know the true names of Defendants, their business
3 capacities, their ownership connection to the property and business, or their
4 relative responsibilities in causing the access violations herein complained of,
5 and alleges a joint venture and common enterprise by all such Defendants.
6 Plaintiff is informed and believes that each of the Defendants herein is
7 responsible in some capacity for the events herein alleged, or is a necessary
8 party for obtaining appropriate relief. Plaintiff will seek leave to amend when
9 the true names, capacities, connections, and responsibilities of the Defendants
10 are ascertained.

11
12 **JURISDICTION & VENUE:**

13 5. The Court has subject matter jurisdiction over the action pursuant to 28
14 U.S.C. § 1331 and § 1343(a)(3) & (a)(4) for violations of the Americans with
15 Disabilities Act of 1990, 42 U.S.C. § 12101, et seq.

16 6. Pursuant to supplemental jurisdiction, an attendant and related cause
17 of action, arising from the same nucleus of operative facts and arising out of
18 the same transactions, is also brought under California's Unruh Civil Rights
19 Act, which act expressly incorporates the Americans with Disabilities Act.

20 7. Venue is proper in this court pursuant to 28 U.S.C. § 1391(b) and is
21 founded on the fact that the real property which is the subject of this action is
22 located in this district and that Plaintiff's cause of action arose in this district.

23
24 **FACTUAL ALLEGATIONS:**

25 8. Plaintiff went to Banter by Piercing Pagoda in August 2021 (three times)
26 with the intention to avail himself of its goods or services motivated in part to
27 determine if the defendants comply with the disability access laws.

28 9. Banter by Piercing Pagoda is a facility open to the public, a place of

1 public accommodation, and a business establishment.

2 10. Unfortunately, on the dates of the plaintiff's visits, the defendants failed
3 to provide wheelchair accessible sales counters in conformance with the ADA
4 Standards as it relates to wheelchair users like the plaintiff.

5 11. Banter by Piercing Pagoda provides sales counters to its customers but
6 fails to provide wheelchair accessible sales counters.

7 12. A problem that plaintiff encountered was that the sales counter was too
8 high. There was no counter that was 36 inches or less in height that plaintiff
9 could use for his transactions.

10 13. Plaintiff believes that there are other features of the sales counters that
11 likely fail to comply with the ADA Standards and seeks to have fully compliant
12 sales counters for wheelchair users.

13 14. On information and belief, the defendants currently fail to provide
14 wheelchair accessible sales counters.

15 15. The failure to provide accessible facilities created difficulty and
16 discomfort for the Plaintiff.

17 16. These barriers relate to and impact the plaintiff's disability. Plaintiff
18 personally encountered these barriers.

19 17. As a wheelchair user, the plaintiff benefits from and is entitled to use
20 wheelchair accessible facilities. By failing to provide accessible facilities, the
21 defendants denied the plaintiff full and equal access.

22 18. The defendants have failed to maintain in working and useable
23 conditions those features required to provide ready access to persons with
24 disabilities.

25 19. The barriers identified above are easily removed without much
26 difficulty or expense. They are the types of barriers identified by the
27 Department of Justice as presumably readily achievable to remove and, in fact,
28 these barriers are readily achievable to remove. Moreover, there are numerous

1 alternative accommodations that could be made to provide a greater level of
2 access if complete removal were not achievable.

3 20. Plaintiff will return to Banter by Piercing Pagoda to avail himself of its
4 goods or services and to determine compliance with the disability access laws
5 once it is represented to him that Banter by Piercing Pagoda and its facilities
6 are accessible. Plaintiff is currently deterred from doing so because of his
7 knowledge of the existing barriers and his uncertainty about the existence of
8 yet other barriers on the site. If the barriers are not removed, the plaintiff will
9 face unlawful and discriminatory barriers again.

10 21. Given the obvious and blatant nature of the barriers and violations
11 alleged herein, the plaintiff alleges, on information and belief, that there are
12 other violations and barriers on the site that relate to his disability. Plaintiff will
13 amend the complaint, to provide proper notice regarding the scope of this
14 lawsuit, once he conducts a site inspection. However, please be on notice that
15 the plaintiff seeks to have all barriers related to his disability remedied. See
16 *Doran v. 7-11*, 524 F.3d 1034 (9th Cir. 2008) (holding that once a plaintiff
17 encounters one barrier at a site, he can sue to have all barriers that relate to his
18 disability removed regardless of whether he personally encountered them).

19
20 **I. FIRST CAUSE OF ACTION: VIOLATION OF THE AMERICANS**
21 **WITH DISABILITIES ACT OF 1990** (On behalf of Plaintiff and against all
22 Defendants.) (42 U.S.C. section 12101, et seq.)

23 22. Plaintiff re-pleads and incorporates by reference, as if fully set forth
24 again herein, the allegations contained in all prior paragraphs of this
25 complaint.

26 23. Under the ADA, it is an act of discrimination to fail to ensure that the
27 privileges, advantages, accommodations, facilities, goods and services of any
28 place of public accommodation is offered on a full and equal basis by anyone

1 who owns, leases, or operates a place of public accommodation. See 42 U.S.C.
2 § 12182(a). Discrimination is defined, inter alia, as follows:

- 3 a. A failure to make reasonable modifications in policies, practices,
4 or procedures, when such modifications are necessary to afford
5 goods, services, facilities, privileges, advantages, or
6 accommodations to individuals with disabilities, unless the
7 accommodation would work a fundamental alteration of those
8 services and facilities. 42 U.S.C. § 12182(b)(2)(A)(ii).
- 9 b. A failure to remove architectural barriers where such removal is
10 readily achievable. 42 U.S.C. § 12182(b)(2)(A)(iv). Barriers are
11 defined by reference to the ADA Standards.
- 12 c. A failure to make alterations in such a manner that, to the
13 maximum extent feasible, the altered portions of the facility are
14 readily accessible to and usable by individuals with disabilities,
15 including individuals who use wheelchairs or to ensure that, to the
16 maximum extent feasible, the path of travel to the altered area and
17 the bathrooms, telephones, and drinking fountains serving the
18 altered area, are readily accessible to and usable by individuals
19 with disabilities. 42 U.S.C. § 12183(a)(2).

20 24. When a business provides sales counters, it must provide accessible
21 sales counters.

22 25. Here, accessible sales counters have not been provided in conformance
23 with the ADA Standards.

24 26. The Safe Harbor provisions of the 2010 Standards are not applicable
25 here because the conditions challenged in this lawsuit do not comply with the
26 1991 Standards.

27 27. A public accommodation must maintain in operable working condition
28 those features of its facilities and equipment that are required to be readily

1 accessible to and usable by persons with disabilities. 28 C.F.R. § 36.211(a).

2 28. Here, the failure to ensure that the accessible facilities were available
3 and ready to be used by the plaintiff is a violation of the law.

4
5 **II. SECOND CAUSE OF ACTION: VIOLATION OF THE UNRUH CIVIL**
6 **RIGHTS ACT** (On behalf of Plaintiff and against all Defendants.) (Cal. Civ.
7 Code § 51-53.)

8 29. Plaintiff repleads and incorporates by reference, as if fully set forth
9 again herein, the allegations contained in all prior paragraphs of this
10 complaint. The Unruh Civil Rights Act (“Unruh Act”) guarantees, inter alia,
11 that persons with disabilities are entitled to full and equal accommodations,
12 advantages, facilities, privileges, or services in all business establishment of
13 every kind whatsoever within the jurisdiction of the State of California. Cal.
14 Civ. Code § 51(b).

15 30. The Unruh Act provides that a violation of the ADA is a violation of the
16 Unruh Act. Cal. Civ. Code, § 51(f).

17 31. Defendants’ acts and omissions, as herein alleged, have violated the
18 Unruh Act by, inter alia, denying, or aiding, or inciting the denial of, Plaintiff’s
19 rights to full and equal use of the accommodations, advantages, facilities,
20 privileges, or services offered.

21 32. Because the violation of the Unruh Civil Rights Act resulted in difficulty,
22 discomfort or embarrassment for the plaintiff, the defendants are also each
23 responsible for statutory damages, i.e., a civil penalty. (Civ. Code § 55.56(a)-
24 (c).)

25 33. Although the plaintiff encountered frustration and difficulty by facing
26 discriminatory barriers, even manifesting itself with minor and fleeting
27 physical symptoms, the plaintiff does not value this very modest physical
28 personal injury greater than the amount of the statutory damages.

1 **PRAYER:**

2 Wherefore, Plaintiff prays that this Court award damages and provide
3 relief as follows:

4 1. For injunctive relief, compelling Defendants to comply with the
5 Americans with Disabilities Act and the Unruh Civil Rights Act. Note: the
6 plaintiff is not invoking section 55 of the California Civil Code and is not
7 seeking injunctive relief under the Disabled Persons Act at all.

8 2. For equitable nominal damages for violation of the ADA. See
9 *Uzuegbunam v. Preczewski*, --- U.S. ---, 2021 WL 850106 (U.S. Mar. 8, 2021)
10 and any other equitable relief the Court sees fit to grant.

11 3. Damages under the Unruh Civil Rights Act, which provides for actual
12 damages and a statutory minimum of \$4,000 for each offense.

13 4. Reasonable attorney fees, litigation expenses and costs of suit, pursuant
14 to 42 U.S.C. § 12205; and Cal. Civ. Code §§ 52.

15
16 Dated: October 26, 2021

CENTER FOR DISABILITY ACCESS

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19 By: _____



20 Amanda Seabock, Esq.
21 Attorney for plaintiff
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